

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-4017

Nathan E. Douglas,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the Eastern
	*	District of Arkansas.
Jo Anne B. Barnhart, Commissioner,	*	
Social Security Administration,	*	[UNPUBLISHED]
	*	
Appellee.	*	

Submitted: May 24, 2002

Filed: May 28, 2002

Before WOLLMAN, FAGG, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Nathan E. Douglas appeals the district court's* dismissal of Douglas's action seeking judicial review of the Commissioner's denial of disability insurance benefits. An administrative law judge decided that an earlier determination could not be reopened because it was issued more than four years ago, and res judicata barred

*The Honorable J. Thomas Ray, United States Magistrate Judge for the Eastern District of Arkansas, to whom the case was referred for final disposition by consent of the parties under 28 U.S.C. § 636(c).

consideration of the present application. The district court dismissed Douglas's action because 42 U.S.C. § 405(g) does not allow judicial review of decisions to dismiss claims based on res judicata.

After de novo review, see Boock v. Shalala, 48 F.3d 348, 351 & n.2 (8th Cir. 1995), we agree with the district court. We have recognized only two exceptions to the general rule prohibiting judicial review of decisions denying applications on the basis of res judicata. See Yeazel v. Apfel, 148 F.3d 910, 911-12 (8th Cir. 1998). We conclude neither exception applies here. First, we do not believe the Commissioner reopened the earlier determination as a matter of administrative discretion. See 20 C.F.R. §§ 404.988(b)-(c), 416.1488(c) (2001); Burkes-Marshall v. Shalala, 7 F.3d 1346, 1348 & n.6 (8th Cir. 1993). Second, we conclude Douglas has not presented a colorable constitutional claim related to either his alleged mental impairment, see Boock, 48 F.3d at 352, or the lack of a hearing concerning the earlier determination, see Yeazel, 148 F.3d at 912.

We affirm the judgment of the district court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.